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Joint written statement* submitted by Lawyers' Rights Watch Canada, Lawyers for Lawyers, The Law Society, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.

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Lawyers and human rights defenders in Turkey: Continued violation of non-derogable rights after lifting of State of Emergency

Item 4 – Human rights situations that require Council's attention

Written Statement by Lawyers' Rights Watch Canada (LRWC) and Lawyers for Lawyers (L4L), The Law Society (TLS), NGOs in Special Consultative Status, to the 39th Session of the United Nations Human Rights Council. The Law Society is also known as the Law Society of England & Wales (TLS) a professional representative body.

Lawyers and human rights defenders in Turkey: Continued violation of non-derogable rights after lifting of State of Emergency

The situation of judges, lawyers, journalists, and human rights defenders in the Republic of Turkey (Turkey) deteriorated dramatically after an attempted coup by a section of Turkey's military on 15 July 2016.1 On 20 July 2016, President Erdogan imposed a State of Emergency decree that resulted in widespread, systematic violations of non-derogable rights, including arbitrary deprivation of liberty, torture, and enforced disappearances. While the State of Emergency was lifted on 18 July 2018, Turkey passed legislation on 25 July 2018, codifying emergency decree laws for a further three years, that facilitates the arbitrary dismissal of judges and officials, detention without charge for up to 12 days without adequate court oversight, and imposes restrictions on assembly.2

The purpose of these measures is to purge and punish persons allegedly associated with Fethullah Gülen. Despite the lack of an independent, impartial investigation to determine those responsible,3 Turkey's President considers Gülenists responsible for the attempted coup, and characterizes persons allegedly associated with Gülenists as "terrorists." With the stated intention of "cleansing" Turkey's judiciary and other institutions of Gülenists,4 Turkey has since July 2016 arbitrarily dismissed, arrested and prosecuted thousands of judges, prosecutors, lawyers, and human rights defenders and journalists.

As of 20 August 2018, Turkey has prosecuted 1,544 lawyers on overbroad charges based on questionable accusations that preclude the right to a defence; 582 lawyers remain under arrest; and 162 lawyers have been sentenced to jail terms ranging from three to 12 years.5 Such charges include: spreading propaganda for an armed terrorist organisation (Law on Fight against Terrorism, Article 7(2)); denigrating the Republic of Turkey, institutions and organs of the State (Criminal Code (CC), Article 301); insulting the President (CC, Article 299); membership in an armed terrorist organization (CC Article 314(2)); membership in an armed organization with the purpose of committing the offences listed parts four and five of this chapter (CC, Article314 (2)).

Turkey has arbitrarily dismissed at least 130,000 public officials,6 and at least 50,000 people are in pre-trial detention. There were numerous reports of torture and ill-treatment of detainees in police custody throughout 2017, including beatings, prolonged enforced stress positions, and threats of rape.7 At least 18 enforced disappearances have been

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[1] For concerns prior to the attempted coup, see Lawyers for Lawyers, Law Society of England and Wales, LRWC, Fair Trial Watch, Joint submission for Turkey's 2015 UPR, http://www.advocatenvooradvocaten.nl/wp-content/uploads/UPR-Submission-Turkey-final-draft-1.pdf.

[2] Human Rights Watch, "Turkey: Normalizing the State of Emergency," 20 July 2018, https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency.

[3] UK House of Commons Foreign Affairs Committee, The UK's relations with Turkey, Tenth Report of Session 2016–17, 21 March 2017, https://publications.parliament.uk/pa/cm201617/cmselect/cmfaff/615/615.pdf.

[4] Ece Toksabay, "Turkey says detains 1,000 'secret imams' in police purge," Reuters, 26 April 2017, https://www.reuters.com/article/turkey-security-arrests/turkey-says-detains-1000-secret-imams-in-police-purge-idUSKBN17S0J1.

[5] Arrested Lawyers' Initiative, "21 Lawyers were sentenced in Istanbul"20 August 2018, https://arrestedlawyers.org/2018/08/20/21-lawyers-were-sentenced-in-istanbul/.

[6] Turkey's Official Gazette, cited in AP, "Turkey fires thousands of state employees in anti-terrorism purge," Guardian, https://www.theguardian.com/world/2018/jul/08/turkey-fires-thousands-of-public-servants-in-anti-terror-purge.

[7] Office of the OHCHR. 'Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr Nils Melzer on the official visit to Turkey – 27 November to 2 December 2016,' 2 December 2016, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976.

documented.8 Dozens of journalists face charges alleging association with "terrorist" organizations. Documentation of rights violations has been hampered by the closure of more than 170 media outlets.9 As of 15 August 2018, 237 journalists and media workers are jailed, the highest number of imprisoned journalists in the world.10 Authorities frequently impose arbitrary bans on public assemblies and violently disperse peaceful demonstrations.

These disproportionate measures gravely violate Turkey's obligations under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR),11 the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), and the European Convention on Human Rights.12 Turkey is obligated to guarantee all individuals subject to its jurisdiction, for example:

- Freedom from arbitrary detention (ICCPR Articles 3, 9);
- Freedom of Expression (ICCPR Article 19);
- Freedom of Association and assembly (ICCPR Article 20);
- Fair trial rights (ICCPR Article 14 (3));
- Freedom from ex post facto charges (Article 15);
- Freedom from torture and ill-treatment (ICCPR Article 7 and UNCAT);
- Remedies for violations (ICCPR Article 2.3).

The Turkish Constitution guarantees equality before the law, freedom of expression (Article 26), and the rule of law (Article 2). These rights remain unchanged under 2017 Constitutional amendments in force after Turkey's June 2018 election.[13] The Turkish government is, therefore, violating domestic legal obligations as well.

During the State of Emergency and since it was lifted, Turkey has persistently violated non-derogable rights. While Article 4 of the ICCPR permits derogation of some rights when "strictly required by the exigencies of the situation,"[14] non-derogable rights include:

- Freedom from torture and ill-treatment (ICCPR Article 4(2), UNCAT);
- Freedom from unnecessary or disproportionate deprivation of liberty (General Comment [GC] 35[15]);
- Right not to be compelled to confess guilt, and prohibition of statements or evidence obtained in violation of ICCPR Article 7 (also UNCAT Article 15, GC 32[16]);
- Fair trial rights, the presumption of innocence and judicial oversight and protection of non-derogable rights (ICCPR Article 14).

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[8] Human Rights Watch, "In Custody: Police Torture and Abductions in Turkey," 12 October 2017, https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey; Stockholm Centre for Freedom, "Enforced disappearances in Turkey," 22 July 2018, https://stockholmcf.org/enforced-disappearences-in-turkey-2/.

[9] Amnesty International, "The State of Emergency has ended but urgent measures are now needed to reverse the roll back of human rights," 18 July 2018, https://www.amnesty.org/en/latest/campaigns/2018/07/turkey-state-of-emergency-lifted/.

[10] Stockholm Center for Freedom, "Jailed and wanted Journalists in Turkey- Updated List," as of 15 August 2018, https://stockholmcf.org/updated-list/.

[11] International Covenant on Civil and Political Rights, 16 December 1966, http://www.refworld.org/docid/3ae6b3aa0.html.

[12] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, http://www.refworld.org/docid/3ae6b3a94.html.

[13] Constitution of the Republic of Turkey, Articles 10, 12, 120, 121, https://global.tbmm.gov.tr/docs/constitution_en.pdf. See 2017 amendments at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)005-e.

[14] ICCPR Article 4, ECHR Article 15; UN Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en

[15] UN Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras. 65, 66, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

[16] UN Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para 6, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en

Many legal professionals have been and continue to be, affected by violations of these rights and by restrictions on the right to counsel and solicitor-client privilege (article 14.3 ICCPR), and detention without judicial oversight for up to thirty days.17 Lawyers fear reprisals for representing detained persons,18 including persons held incommunicado without charge, timely access to counsel, notice of charges and/or time to prepare a defence. To discharge its international legal obligations, Turkey must ensure the right to legal representation in criminal and civil proceedings19 including protection of lawyers from interference, harassment and reprisals.20 Such protection of lawyers is fundamental to access to justice for all citizens, including the protection of rights and access to remedies for violations.

Recommendations

LRWC, L4L and TLS request the Council to urge Turkey to:

- Repeal all legislation and procedures that entail unlawful restrictions on rights;
- Unconditionally release and drop charges against all legal professionals, defenders and journalists who have been arbitrarily arrested, charged or sentenced under State of Emergency decrees or its successor legislation, without credible evidence and in violation of fair trial guarantees;
- Ensure that all legal professionals arbitrarily dismissed under the State of Emergency decree or its successor legislation are reinstated to their positions and compensated for loss of earnings and other harms;
- Ensure that professional bodies with decision-making powers on dismissals of judges and prosecutors are independent;
- Authorize an official visit by the UN Special Rapporteur on the Independence of Judges and Lawyers to investigate the independence and security of judges and lawyers in Turkey and make pertinent recommendations.

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[17] Council of Europe, Statement by the Commissioner for Human Rights, "Measures Taken Under the State of Emergency in Turkey," 27 July 2016, https://www.coe.int/en/web/media-freedom/-/commissionner-statement-on-measures-taken-under-the-state-of-emergency-in-turkey.

[18] Human Rights Watch, "Turkey: Judges, Prosecutors Unfairly Jailed," 5 August 2016, https://www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed.

[19] ICCPR Article 14(3) (d)); GC 32, para 10.

[20] UN Basic Principles on the Role of Lawyers, 7 September 1990, http://www.refworld.org/docid/3ddb9f034.html.